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IN THE

Supreme Court of the United States

October Term, 1966

NO. 389

INSURANCE COMPANY OF NORTH AMERICA,
Petitioner

v.

W. V. KEELING, *Respondent*

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

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Respondent urges this Court to deny the writ sought by Petitioner.

QUESTION

The only question in this case is "What is the amount in controversy?"

STATEMENT BY RESPONDENT

Respondent had two accidents. He filed two claims, neither for an amount in excess of $10,000 (R. 17, 26).

There were two awards, one for $3,500 and the other for $1,820 (R. 4, 5). Petitioner gave separate notice of appeal on each case and filed one complaint in Federal District Court, attempting to appeal two awards in one action (R. 1-3). In this complaint Petitioner alleged only that the amount in controversy in each claim was in excess of $10,000 and that in each claim Respondent had sought recovery of benefits before the Board for total and permanent disability. These allegations were both denied by Respondent in his motion to dismiss (R. 6-9); they were both denied in his answer (R. 10-11); and a compulsory counterclaim was filed for a fixed sum, $9,485. **At no time, either before the Texas Industrial Accident Board, in State Court, or in the Federal Court, has Respondent ever made a claim for or alleged that he is entitled to more than $10,000.**

REASONS THE WRIT SHOULD BE DENIED

Petitioner makes an attack on *Horton v. Liberty Mutual Insurance Company*, 367 U.S. 348 (1961) and on *Hardware Mutual Casualty Company v. McIntyre*, 304 F.2d 566 (C.A. 5), cert. denied, 371 U.S. 878 (1962), on the ground that the decision in those cases would allow federal jurisdiction to be conferred by counterclaim. Neither of those cases so hold; both merely hold that the amount in controversy cannot be determined until the complaint is denied and the counterclaim is filed. Clearly in *Horton* the amount in controversy exceeded $10,000 as revealed by the entire record. Just as clearly in *McIntyre* the amount in controversy was less than $10,000. Even more clearly does the record reveal here that the amount in controversy does not exceed $10,000.

It would be ridiculous to ask this Court to determine the amount in controversy in each compensation case from the State of Texas in which the insurance company decides it would like the case tried in Federal Court. To follow the Petitioner's line of thinking to its logical conclusion and to sustain its contentions, would allow an appeal in Federal Court in every compensation case heard by the Industrial Accident Board of the State of Texas, regardless of the contentions made by the injured workman before the Board or in Court.

By any rule that has ever been announced by this Court, the real, actual amount in controversy in this case is less than $10,000. Petitioner makes the bald allegation in its complaint that the amount in controversy in each claim exceeds $10,000, a legal conclusion only. It further makes the bald allegation that each claim before the Texas Industrial Accident Board claimed total and permanent disability. This is untrue. How can Petitioner be in good faith when the record conclusively shows that neither claim made any mention of either total or permanent disability. The suit by Respondent in State Court was for less than $10,000; his counterclaim in Federal Court was for less than $10,000.

There is no important question of federal jurisdiction here. The sole question is the amount in controversy and this Court in *Horton* has laid down the ground rules for determining this question, to be used by both insurance companies and injured workmen in the State of Texas, though both or neither may have liked the decision. To grant the writ in further Texas compensation cases would merely be flogging a dead horse and encourage more such cases to be filed, primarily for the purpose of delay.

This case is important to Respondent because it has already been over six years since he hurt his eye and over four years since he hurt his back. He faces the grinding of the wheels of Texas Justice after this writ is denied and he gets his chance in the State Courts. It is important to Petitioner because for some reason it prefers compensation cases against it to be tried in Federal Court. It may be of some academic interest to some other Texas attorneys and judges. Elsewhere in the other 49 states, people could care less. They could only wish this writ to be hurriedly denied so that this Court could go on to bigger and better things.

CONCLUSION

This Petition should be denied.

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